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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re B.S., a Person Coming Under the  
Juvenile Court Law.

SAN DIEGO COUNTY HEALTH AND  
HUMAN SERVICES AGENCY,

Plaintiff and Respondent,

v.

JASON L.,

Defendant and Appellant.

D070199

(Super. Ct. No. J519298A-B)

APPEAL from an order of the Superior Court of San Diego County, Kimberlee A. Lagotta, Judge. Affirmed.

Patti L. Dikes, under appointment by the Court of Appeal, for Defendant and Appellant.

Thomas E. Montgomery, County Counsel, John E. Philips, Chief Deputy County Counsel, and Paula J. Roach, Deputy County Counsel, for Plaintiff and Respondent.

Jason L. is the stepfather of 12-year-old B.S. He is married to B.S.'s biological mother, Lisa S., has a four-year-old son with Lisa, C.L., and has lived in the same household as Lisa and B.S. since 2011. The court declared B.S. and C.L. dependents of the juvenile court after allegations that Jason choked B.S. and the children witnessed domestic violence between Jason and Lisa. The juvenile court denied Jason's request for presumed parent status as to B.S. On appeal, Jason argues the juvenile court erred in denying him presumed parent status because he had lived in the same household as B.S. for several years and held her out as his own child. We reject Jason's arguments and affirm.

#### FACTUAL AND PROCEDURAL BACKGROUND

Lisa met Jason when B.S. was two years old. Joseph G. is B.S.'s biological father. Lisa and Jason dated for several years before Lisa became pregnant with C.L. At that point, Jason moved in with Lisa and they got married shortly thereafter.<sup>1</sup>

From July 2014 to July 2015, Jason and Lisa participated in voluntary services with the San Diego County Health and Human Services Agency (Agency) after the sheriff's department found drugs and drug paraphernalia in their home. During the Agency's investigation of that matter, a social worker interviewed B.S. B.S. reported that Lisa did not like Jason because he was "drinking drugs" that looked like beer and

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<sup>1</sup> There is conflicting evidence in the record concerning when Jason moved in with Lisa and B.S. In a parentage inquiry, Jason asserted that he had lived with B.S. since she was two years old. However, Lisa reported that she and Jason began living together in 2008 or 2011. We resolve conflicts in the evidence to support the juvenile court's order. (*In re I.W.* (2009) 180 Cal.App.4th 1517, 1525.)

smoking from "some sort of glass." B.S. witnessed Jason doing those things multiple times. B.S. also reported that she was scared of Jason and that he had kicked her in her "front private area," which caused her to cry. The maternal uncle's significant other reported to a social worker that Jason had paranoid delusions about B.S. and had punished B.S. with a time out because he thought that she was part of a conspiracy of spies working through his television. Jason also told the social worker that B.S. was an actress and part of a "network."

In December 2015, law enforcement responded to Jason and Lisa's home after receiving a domestic disturbance call. When officers arrived, Lisa explained that Jason had been acting erratically. Specifically, Jason was paranoid, believed there were surveillance equipment and microphones outside the home watching and listening to him, was controlling, and had angry verbal outbursts. Jason informed officers that he had a top secret job and could not talk to them.

Three days later, Jason walked to a police station and reported that Lisa had punched him in the back. Officers went to Jason and Lisa's home and interviewed Lisa and B.S. B.S. reported that Jason and Lisa had been arguing that day. When asked if Jason and Lisa got into a physical fight, B.S. responded, "Daddy choked me." B.S. explained that Jason choked her around her throat, pointed toward the front of her neck, and demonstrated on an officer. B.S. went on to state that Jason lifted her off the ground, she could not breathe, and she fell asleep as he choked her. She thought she was asleep for approximately five minutes and woke up on the living room floor. She had urinated in her pants.

B.S. told the officer that she did not tell her mother about the incident until the next morning. Thereafter, Jason and Lisa engaged in an argument. Jason slapped Lisa multiple times on her forehead. B.S. heard Jason tell Lisa that he was going to have her arrested and Lisa was going to jail.

Lisa claimed Jason never hit the children and denied any violence between her and Jason. She said Jason had been paranoid and agitated for about two weeks. When officers confronted Lisa about B.S.'s statements, Lisa responded that B.S. was lying. The officer observed red marks on Lisa's temple areas, forehead, and neck.

An officer arrested Jason and obtained an emergency protective order against him protecting Lisa, B.S. and C.L. The officer suggested to Lisa that she obtain a permanent protective order, but she was not interested and instead asked about how to get around the emergency protective order so that Jason could return home. The officer was concerned because he did not believe Lisa was worried about the safety of her children.

The Agency received a referral regarding the incident and began an investigation. When a social worker interviewed Lisa, Lisa denied that a physical altercation occurred between her and Jason. Lisa also said that she did not believe B.S.'s story about Jason choking her and claimed B.S.'s speech delay may have resulted in a misunderstanding. Lisa informed the social worker that she wanted Jason to come home.

The social worker also interviewed B.S. When the social worker asked B.S. about the incident, B.S. stated, "I don't want to talk about it. My mom doesn't want to hear about it." The social worker asked B.S. about what she had previously told officers. B.S. said, "My mom said not to talk about it."

In January 2016, the San Diego County Sheriff's Department conducted a forensic interview of B.S. During that interview, B.S. stated that Lisa wanted Jason back. B.S. was reluctant about telling the interviewer about previously talking to the police and said Lisa told her not to talk about Jason. After Lisa told B.S. that she could talk about anything, B.S. informed the interviewer that she had previously said to the police that Jason had choked her, but it was a lie. However, B.S. went on to tell the interviewer in detail about how Jason choked her.

The Agency filed petitions alleging Jason had choked B.S., and B.S. and C.L. had witnessed violent confrontations between Jason and Lisa. The Agency also sought a protective custody warrant to remove the children from the home. The juvenile court detained B.S. and C.L. with the maternal grandparents. At the detention hearing, Jason requested a presumed father finding as to C.L. only. The trial court made that finding.

The Agency contacted Joseph who reported that he was married, had children and was living in Nevada. Joseph stated that he had not seen B.S. since she was three or four years old as a result of Lisa's failure to maintain contact. He paid child support for three to four years, but stopped paying after he got married. Joseph wanted to be involved in the case and have a relationship with B.S. However, he was not in a position to care for B.S. and was happy that B.S. was with her maternal grandparents.

Prior to the jurisdiction hearing in February, 2016, a social worker asked B.S. if she felt safe with her grandparents. B.S. replied, "yes." When the social worker asked if B.S. felt safe with Jason, B.S. said, "no." B.S. did not want to talk about why she felt unsafe.

At the jurisdiction hearing, Jason filed a parentage inquiry form seeking presumed father status as to B.S. He said B.S. had lived with him from 2006 to 2016, that he supported her, he had included her on his health insurance in the past, she called him "dad," and he told others that he was her father. Lisa supported Jason's request. The Agency objected to the court elevating Jason's status to a presumed parent. The Agency recommended that B.S. and C.L. remain placed with the maternal grandparents and that Jason have no contact with B.S. Jason and Lisa set the matter for trial. The court deferred ruling on whether Jason should be designated a presumed parent.

On the first day of trial, Jason filed a second parentage inquiry form. He again sought presumed father status as to B.S. Jason stated that Lisa referred to him as B.S.'s father, he told everyone, including teachers, that he was B.S.'s father, and he loved her as a daughter.

At trial, the juvenile court heard evidence about B.S.'s statement that Jason had choked her, her later recantation, and the credibility of B.S.'s claims. On the issue of paternity, multiple witnesses, including B.S., testified that B.S. considered Jason her father. The juvenile court received a DNA parentage test report that showed Joseph was B.S.'s biological father. As a result, the court elevated Joseph's status to biological father of B.S.

Joseph testified that while he was in the Coast Guard, he had paid child support for B.S., sent her Christmas gifts, and provided Lisa with a means to get tax-free groceries and supplies. He had also visited B.S. several times. Joseph stated that he told friends

and anyone who asked if he had children that he was B.S.'s father. At one point, Joseph contacted the superior court to obtain parental rights, but was not successful.

The juvenile court found the allegations in the petition true by clear and convincing evidence. It found B.S.'s statements to her mother, grandmother, and the police that Jason had choked her to the point where she was unconscious and urinated on herself were credible. The court also found that there were several acts of domestic violence between Jason and Lisa.

In evaluating the issue of paternity, the court stated that it found *In re T.R.* (2005) 132 Cal.App.4th 1202 (*T.R.*), instructive. The court noted that the instant case involves acts of physical abuse whereas *T.R.* involved sexual abuse. However, the court found that Jason committed two serious acts of physical abuse on B.S. that were inconsistent with acting as a parent. Specifically, the court indicated that "[t]o choke the child, to kick her in her private parts, cannot be seen as an act consistent with acting as a parent. Can't even be consistent with an act of excessive discipline. It's an act of physical abuse upon this child that has no basis in an act of parenting." Thus, the court denied Jason's request for presumed father status as to B.S. The court elevated Joseph's status to presumed father.

Regarding disposition of the case, the juvenile court declared B.S. and C.L. dependent children, removed B.S. from Lisa's care, removed C.L. from Lisa and Jason's care, found it detrimental to place B.S. with Joseph, and placed both children with a relative. The court provided Lisa with reunification services as to B.S. The court continued the no contact order between Jason and B.S.

## DISCUSSION

Jason argues the juvenile court erred in denying him presumed parent status as to B.S because he met the criteria for that designation under Family Code section 7611, subdivision (d).<sup>2</sup> He also contends the juvenile court misinterpreted *T.R., supra*, 132 Cal.App.4th 1202, as disqualifying any parent who has abused his or her child from attaining presumed parent status. We reject Jason's arguments.

### A. General Legal Principles

"Dependency law recognizes three types of fathers: presumed, alleged and biological." (*T.R., supra*, 132 Cal.App.4th at p. 1208.) "A father's status is significant in dependency cases because it determines the extent to which the father may participate in the proceedings and the rights to which he is entitled. [Citation.] 'Presumed father status ranks the highest.' " (*Id.* at p. 1209.)

"A presumed father is one who meets one or more specified criteria listed in section 7611 [citation]. [Citation.] Section 7611 sets forth a number of rebuttable presumptions of paternity, mostly concerned with various forms of marriage or attempted marriage to the child's mother. [Citation.] 'The statutory purpose [of section 7611] is to distinguish between those fathers who have entered into some familial relationship with the mother and child and those who have not.' " (*T.R., supra*, 132 Cal.App.4th at p. 1209.)

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<sup>2</sup> All further statutory references are to the Family Code.



At issue here is the presumption set forth in section 7611, subdivision (d), which provides presumed parent status if "[t]he presumed parent receives the child into his or her home and openly holds out the child as his or her natural child." A person requesting presumed parent status under section 7611, subdivision (d) must have a "fully developed parental relationship" with the child. (*R.M. v. T.A.* (2015) 233 Cal.App.4th 760, 776, italics omitted.) A presumed parent must demonstrate " 'a full commitment to [parental] responsibilities—emotional, financial, and otherwise.' " (*In re Jerry P.* (2002) 95 Cal.App.4th 793, 801-802.) "The critical distinction is not the living situation but whether a parent-child relationship has been established. ' "[T]he premise behind the category of presumed [parent] is that an individual . . . has demonstrated a commitment to the child and the child's welfare." ' " (*Martinez v. Vaziri* (2016) 246 Cal.App.4th 373, 384-385.)

"One who claims he [or she] is entitled to presumed [parent] status has the burden of establishing, by a preponderance of the evidence, the facts supporting that entitlement. [Citation.] A presumption arising under section 7611 is a 'rebuttable presumption affecting the burden of proof and may be rebutted in an appropriate action only by clear and convincing evidence.' " (*T.R., supra*, 132 Cal.App.4th at p. 1210.) On appeal, we review the juvenile court's determination of presumed father status under the substantial evidence standard. (*In re J.H.* (2011) 198 Cal.App.4th 635, 646; *Charisma R. v. Kristina S.* (2009) 175 Cal.App.4th 361, 368-369.)

## B. Analysis

In the case before us, the juvenile court denied Jason presumed father status based at least in part on *T.R.*, *supra*, 132 Cal.App.4th 1202. In that case, T.R.'s stepfather sought presumed parent status. (*Id.* at p. 1206.) The stepfather was a registered sex offender and hid his criminal record of prior child molestation from T.R.'s mother. (*Id.* at pp. 1206-1207.) The Agency filed a dependency petition, alleging T.R. was at risk of being sexually abused because her sister and grandmother reported incidents of sexually inappropriate conduct between the stepfather and T.R. (*Id.* at p. 1207.) The juvenile court denied the stepfather presumed parent status because "his sexual abuse of T.R. was fundamentally inconsistent with the role of a parent." (*Id.* at p. 1208.)

On appeal in *T.R.*, this court evaluated the factors weighing in favor and against a presumed parent finding under section 7611, subdivision (d). (*T.R.*, *supra*, 132 Cal.App.4th at p. 1211.) For example, the stepfather had "openly acknowledged T.R. as his daughter, provided financial support, and received her in his home," all of which supported presumed parent status. (*Ibid.*) However, this court noted that "these positive factors cannot be viewed in a vacuum." (*Ibid.*) The stepfather was also a registered sex offender who had a history of molesting young girls, he had hidden his criminal history from T.R.'s mother, and the juvenile court found true allegations that the stepfather molested T.R. (*Ibid.*) The court determined that the stepfather's "conduct was antithetical to a parent's role and was a blatant violation of parental responsibilities. It more than counterbalanced the factors favoring [the stepfather's] presumed father status." (*Ibid.*) Further, even if "juvenile court should have applied the section 7611, subdivision

(d) presumption of presumed father status, the error was harmless because the presumption was more than amply rebutted" by evidence that the stepfather acted inappropriately with T.R., had been convicted of sexually molesting other children, was not T.R.'s biological father and did not bring her into his home until she was three years old. (*Id.* at p. 1212.)

Here, as in *T.R.*, we begin our inquiry by determining whether Jason demonstrated under section 7611, subdivision (d), that he should be a presumed parent because he "receive[d] the child into his . . . home and openly [held] out the child as his . . . natural child." The record reflects many similarities to the situation of the stepfather in *T.R.* For example, Jason was not B.S.'s biological father. His relationship with her did not begin until she was two years old and he had only lived with her since she was approximately eight years old. However, there is substantial evidence that Jason supported B.S. financially and included her on his health insurance in the past. Further, Jason represented to others that he was B.S.'s father, B.S. and Lisa both referred to Jason as B.S.'s father, and Jason considered himself B.S.'s father. These factors regarding financial support and representations that B.S. was Jason's daughter favored a finding that Jason is a presumed parent. However, as in *T.R.*, there are also substantial and significant factors weighing against a presumed parent finding.

Jason perpetrated acts of serious physical abuse on B.S. There was substantial evidence that Jason kicked B.S. in the vaginal area and choked her to the point where she lost consciousness and urinated on herself. Jason did not challenge the juvenile court's finding of physical abuse on appeal. Although this case is different from *T.R.*, *supra*, 132

Cal.App.4th 1202, in that it involves physical abuse rather than sexual abuse, the critical inquiry is not the type of abuse. Rather, the focus is on whether the parent's conduct is so inconsistent with his parental responsibilities that it counterbalances the factors favoring a presumed parent finding. (*Id.* at p. 1211.) "After all, the premise behind the category of presumed father is that an individual who has demonstrated a commitment to the child and the child's welfare—regardless of whether he is biologically the father—is entitled to the elevated status of presumed fatherhood." (*Id.* at pp. 1211-1212.) In this case, Jason's acts of physical abuse against B.S. were detrimental to her welfare and inconsistent with his parental responsibilities. Those acts, coupled with Jason's drug use in B.S.'s presence, his perpetration of domestic violence against Lisa in B.S.'s presence, and his delusional and paranoid treatment of B.S. counterbalanced the factors supporting a finding that Jason was a presumed parent.

Moreover, as in *T.R.*, even if the juvenile court should have applied the presumed parent presumption under section 7611, subdivision (d), the error was harmless because there was substantial evidence to rebut the presumption. (*T.R.*, *supra*, 132 Cal.App.4th at p. 1212.) Jason severely physically abused B.S., punished her based on his paranoid and delusional beliefs, and perpetrated domestic violence against Lisa in front of B.S. Further, Jason was not B.S.'s biological father and did not live with her until she was approximately eight years old. This evidence amply rebutted the presumed parent presumption under section 7611, subdivision (d). (*T.R.*, *supra*, 132 Cal.App.4th at p. 1212.)

We also reject Jason's argument that the juvenile court misinterpreted *T.R.*, *supra*, 132 Cal.App.4th 1202, as automatically disqualifying any parent who has abused his or her child from attaining presumed parent status. To support his argument, Jason relies on this court's refusal in *T.R.* to create a "bright-line test" that would disqualify a person from presumed parent status if he or she had "committed sexual or serious physical abuse on a child leading to the institution of the dependency proceeding." (*T.R.*, *supra*, 132 Cal.App.4th at p. 1210, fn. 5; see also *In re Alexander P.* (2016) 4 Cal.App.5th 475, 496 ["declin[ing] to adopt a rule that would disqualify a person from presumed parent status solely because their conduct led to the filing of the dependency proceeding"].) Based on our review of the record, the juvenile court in the case before us did not create a "bright-line test" that automatically disqualified Jason from obtaining presumed parent status as a result of his physical abuse of B.S. Rather, the juvenile court considered the serious physical abuse as a significant factor disfavoring a presumed parent finding. The juvenile court also noted that Jason was not B.S.'s biological father and he had exhibited paranoid and delusional behavior regarding B.S.<sup>3</sup>

Lastly, we reject Jason's argument that the juvenile court's interpretation of *T.R.*, *supra*, 132 Cal.App.4th 1202, violated his right to due process. Jason forfeited his due process challenge by failing to raise it in the trial court. (*In re Dakota H.* (2005) 132

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<sup>3</sup> Like the *T.R.* and *Alexander P.* courts, we also decline to create a "bright-line test." Instead, we follow the rule of those cases that a parent's sexual or serious physical abuse of a child is one factor the juvenile court can consider in making a presumed parent determination. (*T.R.*, *supra*, 132 Cal.App.4th at p. 1210, fn. 5; *Alexander P.*, *supra*, 4 Cal.App.5th at p. 496.)

Cal.App.4th 212, 222.) However, even if Jason did not forfeit his argument, we reject it on the merits. He contends the juvenile court misinterpreted *T.R.* as allowing juvenile courts to disregard the rights of offending parents and thus ran afoul of principles of due process and the dependency statutory scheme. As we explained, based on our review of the record, the juvenile court did not interpret *T.R.* as automatically disqualifying Jason from presumed parent status. Instead, it considered Jason's physically abusive conduct as a factor in its presumed parent determination. The juvenile court provided Jason an opportunity to present evidence and argument that he should be designated a presumed parent, but Jason did not meet his burden to establish that entitlement. Under these circumstances, the juvenile court did not violate Jason's due process rights.

Based on the foregoing, we reject Jason's arguments that the juvenile court erred in denying his presumed parent status.

DISPOSITION

The order is affirmed.

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NARES, J.

WE CONCUR:

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McCONNELL, P. J.

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IRION, J.